THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.6108 of 2003

27.7.2007

Between:

Mrs.Md.Asujunnisa Begum, W/o.Yusuf

… Petitioner

AND

State of Andhra Pradesh represented by its Principal Secretary, Tribal Welfare Development, Secretariat, Saifabad, Hyderabad
And others

… Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.6108 of 2003

ORDER:

Notice sent by the Registry to fifth respondent on 11.6.2003 returned unserved with an endorsement that the addressee refused to receive the same. In view of this, the notice is deemed to have served on fifth respondent. None appears for the fifth respondent.

The petitioner purchased land admeasuring Acs.1.75 in survey No.31 situated at Achayyapalem village of Buttayagudem Mandal in West Godavari District, under registered sale deed dated 10.12.1962 from one Ch.Satyanarayana Raju. On a complaint given by the Special Deputy Tahsildar (Tribal Welfare) – hereafter called, the SDT; third respondent initiated action under Section 3(2) of Andhra Pradesh Schedule Areas Land Transfer Regulation, 1959, as amended by Regulation I of 1970, (hereafter called, the Regulation). Petitioner opposed the ejectment contending that transaction in her favour is not prohibited by the Regulation. Third respondent passed order dated 22.11.1988 ordering ejectment of the petitioner and restoration of the land in favour of fifth respondent, a tribal. Aggrieved by the same, petitioner preferred appeal. By order dated 30.6.2001, in SRA No.18 of 1988, Agent to the Government dismissed the appeal. Petitioner then preferred revision. By orders in G.O.Ms.No.22, dated 18.3.2003, the Government dismissed the revision. Aggrieved by the same, the present writ petition is filed.

The case of the petitioner is that grandfather of the fifth respondent was a scheduled tribe belonging to Koya community. Originally he was the owner of the subject land. He sold the land under registered sale deed dated 11.5.1940 in favour of one Abothu Mangayya, who was a scheduled tribe belonging to Madiga community. Abothu Mangayya, in turn, sold the property to

Chemataboina Venkata Swamy, under registered sale deed dated 03.12.1959, who in turn sold the property to vendor of the petitioner under registered sale deed dated 08.9.1960. The petitioner, therefore, contends that the sale in her favour on 10.12.1962 is not void, as the transaction was much prior to coming into force of the Regulation, with effect from 03.2.1970.

The counter affidavit is filed by the SDT opposing the writ petition. It is asserted that the provisions of Regulation are applicable as the land was originally belonged to a tribal, namely, Podiyam Peda Gangulu. The petitioner is a non-tribal and she purchased the property from a non-tribal in contravention of the Regulation and accordingly an order was passed under Section 3(2)(a) of the Regulation.

Learned Counsel for the petitioner submits that by reason of the notification issued by the Government under Section 7 of the Agency Tracts Interest and Land Transfer Act, 1917 (Act I of 1917) being order No.187, Home (Judicial), dated 22.1.1918, Madigas in Godavari Districts were notified as hill tribes. Therefore, the sale dated 11.5.1940 by the grandfather of fifth respondent, Podiyam Peda Gangulu (Koya), in favour of Abothu Mangayya (Madiga) is a valid sale. He further submits that by reason of the Constitution (STs) Order 1950 and Constitution (SCs) Order 1950, Madigas were deleted from the list of scheduled tribes and were included in the list of scheduled castes. Therefore the sale by Mangayya in favour of Venkata Swamy on 03.10.1959 as well as subsequent sales on 08.9.1960 and on 10.12.1962 (in favour of the petitioner) must be treated as transaction between non-tribal and non-tribal. Under Regulation I of 1959, till the amending Regulation I of 1970 there was no prohibition for transfer of land by a non-tribal to a non-tribal. Learned Counsel, therefore, would urge that the transaction in favour of the petitioner under the sale deed dated 10.12.1962 is not void. He placed reliance on the Full Bench decision of this Court in **Gaddam Narsa Reddy v Collector, Adilabad District**[1] and the decision of the Supreme Court in **Deputy Collector v S.Venkata Ramanaiah**[2].

Per contra, learned Government Pleader for Social Welfare submits that Abothu Mangayya transferred the land in favour of Venkata Swamy (a non-tribal) on 03.10.1959 after coming into force of the Regulation I of 1959 without obtaining any permission under Act I of 1917 and therefore the said transaction is void. When the sale in favour of petitioner's vendor's vendor is void, subsequent sale is also rendered invalid. He submits that the Court should draw a presumption that any transaction of the land belonged to tribals by non-tribals is void.

There is no dispute that Peda Gangulu and Abothu Mangayya were tribals when the former sold the land to the latter. Indeed a reference to the Order No.187, dated 22.1.1918, issued by the Governor in Council under Section 7 of the Regulation I of 1917 makes it clear that Koyas and Madigas in Godavadi Districts were notified as hill tribes. The sale between them is not rendered void under Section 4 of Act I of 1917. By the time Mangayya sold the property in favour of Vnkata Swamy, he was no more a scheduled tribe by reason of the Constitution (STs) Order 1950, as rightly contended by the learned Counsel for the petitioner. Therefore, the sale transaction by him in favour of Venkata Swamy or the subsequent sale transaction by Venkata Swamy to Satyanarayana Raju and then from him to the petitioner are all transactions between non-tribals and non-tribals. The question therefore is whether these transactions are rendered void under Section 3(1)(a) of Regulation I of 1959, as amended by Regulation I of 1970.

The question is no more *res integra*. In **Gaddam Narsa Reddy** (supra), a Full Bench of this Court considered the question as to whether Regulation I of 1970, amending Section 3 of Regulation I of 1959 is retrospective or not. Answering the question in the negative, their Lordships laid down as under.

> A transfer of immovable property situate in agency tracts, made after the coming into force of the A.P. Scheduled Areas Land Transfer Regulation I of 1959 or its amendment Regulation II of 1963 or Amendment Regulation I of 1970, even if made in compliance with the provisions of the Transfer of Property Act, Indian Registration Act or Hyderabad Tenancy and Agricultural Lands Act or any other law applicable thereto, is null and void, if it contravenes the provisions of S.3(2) of the said Regulation, the authorities mentioned therein can decree ejectment of the persons claiming under such transfer and pass orders restoring the lands to the transferors or their successors or pass orders for disposing of the said property as directed therein.
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> Section 3(1) of the Regulation I of 1959 and its amendments by Regulation II of 1963 and I of 1979 have no retrospective operation and do not affect transfers made prior to the said Regulation or its amendments coming into force and the authorities under Section 3(2) of the Regulation have no jurisdiction to pass orders in relation to the immovable property covered by such transfers.

I n **S.Venkata Ramanaiah** (supra), the Supreme Court considered the question, “whether the proceedings of the Regulation I of 1959, Regulation II of 1963 and Regulation I of 1970 have retrospective effect and can affect the proceedings made prior to

coming into force of the Regulation I of 1917". The Supreme Court answered the question as follows.

> On a conjoint reading of Section 3(1)(a) and Section 3(2)(a), it becomes clear that the section seeks to hit the transfers effected after the section came into force and possession only under such invalid transfers is sought to be dealt with for the purpose of eviction of transferees and restoration of possession to transferors, as the case may be, under Section 3(2)(a) of the Regulation. Consequently, the alternative submission of learned senior counsel for the authorities that even though transfer of immovable property in the Agency tracts may not be hit by section 3(1)(a) still possession under such transfers could be restored to the original transferor under Section 3(2)(a), cannot be countenanced. Section 3(2)(a) is also corollary to Section 3(1)(a) and cannot have any independent role to play. Nor can it cover any area, which is not encompassed by the sweep of Section 3(1)(a).

In this case, transaction under sale deeds dated 03.10.1959, 08.9.1960 and 10.12.1962 were prior to coming into force of the Regulation I of 1970 with effect from 03.2.1970 and, therefore, they are not rendered void and illegal. The appellate authority as well as revisional authority passed orders in ignorance of the law declared by the Supreme Court as well as the Full Bench of this Court and, therefore, the impugned order cannot be sustained.

Accordingly the impugned order is set aside and in consequence thereof, the orders passed by the appellate authority as well as the revisional authority are also set aside.

The writ petition, with the above observations, is accordingly allowed. No costs.

(**V.V.S.RAO, J**)

July 27, 2007.
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[1] AIR 1982 AP 1 (FB)

[2] AIR 1996 SC 224